

IN THE  
Supreme Court of the United States

OCTOBER TERM, 1944.

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No. 263.

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FIDELITY-PHILADELPHIA TRUST COMPANY, and  
ROBERT A. WORKMAN, Executors of the Estate  
of Anna C. Stinson, Deceased,  
Petitioners,

v.

WALTER J. ROTHENSIES, Individually and as Col-  
lector of Internal Revenue for the First District of  
Pennsylvania,  
Respondent.

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PETITIONERS' REPLY BRIEF.

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*Fidelity-Philadelphia Trust Company, and Robert A.  
Workman, Executors of the Estate of Anna C.  
Stinson, Deceased,*

*Petitioners,*

*v.*

*Walter J. Rothensies, Individually and as Collector of  
Internal Revenue for the First District of Pennsyl-  
vania,*

*Respondent.*

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**PETITIONERS' REPLY BRIEF.**

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Petitioner herewith replies to the MEMORANDUM FOR THE RESPONDENT, calling the Court's attention to the case of

**Field v. Commissioner (C. C. A. 2d).**

This case was decided on July 13, 1944, and was published after the filing of the Petitioners' Brief in this case, in 1944 Prentice-Hall Federal Tax Service, paragraph 62,664, and in Commerce Clearing House Inheritance,

Estate and Gift Tax Service, paragraph 10,134. Briefly, the facts of that case, leaving out complicating details, were that in 1922 a decedent created a trust, reserving the income to himself for life, and thereafter to other beneficiaries. The trust was to last until the death of the survivor of two nieces, who upon the date of the decedent's death were aged 18 and 25, respectively. The face value of the portion of the trust involved was approximately One Hundred Fifty-seven Thousand Dollars (\$157,000.00). Its value after the death of the two nieces was approximately Twenty-four Thousand Dollars (\$24,000.00); and its value to a man of the decedent's age, after the death of the two nieces—contingent upon his surviving both nieces—was Eight Hundred Ninety-one Dollars, Eighteen Cents (\$891.18).

The Tax Court included the entire principal at its face value in the decedent's estate. The Circuit Court of Appeals for the Second Circuit reversed this decision, and held that the value of the intervening estates for the lives of the two nieces should be deducted, and sent the case back to the Tax Court for calculation of the tax on that basis, namely a valuation of \$24,000.00.

"This case would seem to be directly in conflict with the decision in the case at bar. Here, the contingency which might bring the estate under the control of the decedent's will is far more remote than it was in the Field case.

Attention is also invited to the following statement appearing on page 8 of the Respondent's Memorandum:

"In the present case, it is not the death of the grantor as life tenant which is significant, but the extinction by her death of the reserved power of testamentary disposition."

It is submitted that this statement is inaccurate because the death of the decedent in this case has not terminated the possibility that the funds of this trust

might pass under her will. The decedent's death had no effect in this case except to terminate her own life estate. It had no effect on the contingency which was not related to her own death.

The facts of this case, therefore, distinguish it from the Hallock case, in that the contingency there turned on the decedent's death, and only then was it resolved. In this case, the contingency does not turn on the decedent's death.

Respectfully submitted,

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